

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No 4765 of 1996  
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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CHARAN JASA SAMAT

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

Heard learned advocate Ms. Subhadra Patel for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 25th April 1996, passed by the District Magistrate, Jamnagar, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order dated 25th April 1996 was executed on the same day, i.e. 25th April 1996 and since then the petitioner is under detention lodged at the District Jail, Junagadh.

The present Special Civil Application was filed in this Court on 8th July 1996 and on 9th July 1996 rule

returnable on 19th August 1996 was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that there were ten criminal cases under the Bombay Prohibition Act registered against the petitioner in the Police Station, Lalpur. Out of them, nine cases were pending trial and in one case, police investigation was going on. After taking into consideration the allegations of ten criminal cases, the detaining authority has mentioned the evil consequence of consumption of liquor and that the petitioner was engaged in the business of unauthorised liquor. Reference has been made to statements of three witnesses made on 17th April 1996 regarding the petitioner's anti-social and criminal activities and that the petitioner has created atmosphere of terror in the area; he was using arms and threatening the innocent people. The detaining authority has also considered that the proceeding of externment may not service the purpose to prevent the petitioner from continuing his anti-social activities, and it was necessary to detain him.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order, and at the most it would constitute a case of breach of law and order.

I have considered the submissions made on behalf of both the sides. In view of the decision of this Court rendered on 4th October 1996 in Special Civil Application No. 3879 of 1996, it is clear that such allegations do not constitute a case of breach of public order. The allegations and the materials which have been relied upon by the detaining authority can at best constitute a case of breach of law and order. It is, therefore, apparent that the detention order has been passed not on the grounds which can be said to be germane to breach of public order. The detention order cannot be based on the ground of breach of law and order and, hence, the order of detention cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 25th April 1996, passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is

declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at liberty, if not required in any other cases. Rule is made absolute.

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